

EEOC Update



RICHARD BURGAMY
DIRECTOR,
EEOC'S LOUISVILLE AREA OFFICE

The Commission



Victoria Lipnic,
Acting Chair



Jenny
Yang



Chai
Feldblum



Charlotte
Burrows

EEOC — A Bipartisan Commission

- Commission consists of five Senate-confirmed Commissioners.
- No more than three Commissioners can be from the same political party.
- Commissioners serve for set terms of 5 years.



General Counsel



President Trump
nominates
Janet Dhillon to
lead EEOC

President Trump nominates
Daniel Gade to EEOC





ADEA 50th Anniversary

December 1967:
Age Discrimination in
Employment Act
signed into law by President Johnson



Commission Focus



COMMISSION ACTION

July 7, 2016: The Commission releases its 10-year review of the **EEOC'S SYSTEMIC PROGRAM**

- 250% increase in systemic investigation in the past 5 years alone
- >71,000 workers received jobs & recovered lost wages due to systemic work
- Amount of monetary relief tripled in the last 5 years compared to the 1st 5 years.
- 64% successful conciliation rate in 2015, up from 21% in 2007.
- EEOC plans to build upon its systemic program to remove persistent & emerging barriers to opportunity.

COMMISSION ACTION

January 1, 2016: EEOC implements
**NATIONWIDE PROCEDURES FOR
RELEASING RESPONDENT POSITION
STATEMENTS** via the EEOC's new **Digital
Charge System**



COMMISSION ACTION

The EEOC's **new Digital Charge System** has
two components:

- 1) Respondent Portal** – Easy uploading of position statement (& soon other documents), information updates, ADR selection
- 2) Charging Party Portal** – Check the status of a charge



Key Takeaways with Digital Charge Processing System

- New Digital Charge Processing System is the new way of doing business.
- Employers cannot opt out
- Be mindful in crafting position statements
- Be certain to separately upload confidential and proprietary documents

COMMISSION FOCUS

June 17, 2015: The Commission meets to discuss **RETALIATION** in the 21st century workplace.

Retaliation accounts for nearly **45% of all charges** filed at the EEOC in 2016.



EEOC Strategic Enforcement Plan



Why a Strategic Enforcement Plan?

- ❖ National law enforcement agency—one EEOC
- ❖ Focus resources on strategic impact
 - ❖ What does Strategic Impact mean?
 - ❖ Significant effect on the development of the law OR
 - ❖ Promoting compliance across large organizations, communities, or industries



2017-2021 Strategic Enforcement Plan

- Eliminating barriers in recruitment & hiring
- Protecting immigrant, migrant & vulnerable workers
- Addressing emerging & developing employment discrimination issues
- Enforcing equal pay laws
- Preserving access to the legal system
- Preventing harassment through systemic enforcement & targeted outreach
- Cases with Strategic Impact

Eliminating Barriers in Recruitment and Hiring

Commission Meeting

10.13.2016

**Big Data in the Workplace:
Examining Implications
for Equal Employment Opportunity Law**

- Focus on class-based recruitment & hiring practices
 - Exclusionary policies & practices
 - Channeling/steering workers
 - Job segregation
 - Restrictive application processes (including inaccessible ones for individuals with disabilities)
 - Screening tools that disproportionately impact workers because of their protected status
- The lack of diversity in certain industries/workplaces are also areas of focus for the Commission

Commission Meeting

5.18.2016

**Promoting Diverse and Inclusive Workplaces
in the Tech Sector**

Protecting Immigrant, Migrant & Vulnerable Workers

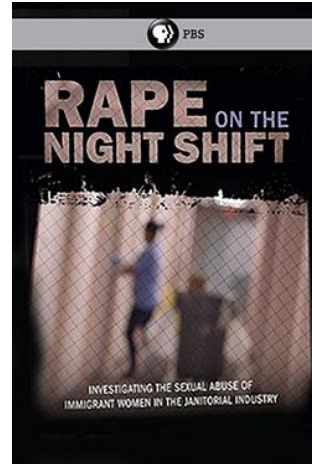
- Each district identifies vulnerable or underserved workers within locale
- Focus on:
 - Job segregation
 - Harassment
 - Trafficking
 - Pay
 - Retaliation

"They look at you like they own you, and whenever they want, they can have you."



Rape in the Fields & Rape on the Night Shift

Frontline documentaries by PBS highlighting the Los Angeles & San Francisco District Offices' focus on sexual assault against farmworkers & janitorial staff



VULNERABLE WORKERS

Human Trafficking



Combined, courts order Global Horizons & Hawaii Farms to pay \$23.6 million to more than 500 Thai workers trafficked into this country.

'Boys' in the Bunkhouse: Henry's Turkeys



Jury Awards \$240 Million for Long-Term Abuse of Workers with Intellectual Disabilities



Indian workers leave the John Pickle Co. after asking for and not receiving their passports on Feb. 7, 2002. STEPHEN FINGRY / Tulsa World file

Judge Orders John Pickle Co. to Pay \$1.24 Million to 52 Foreign Workers in 'Human Trafficking' Case

Addressing emerging & developing employment discrimination issues

The Americans with Disabilities Act

- Inflexible Leave Policies Under the ADAAA
 - Individualized Assessment
 - EEOC v. Lowes, et al.
- Qualification Standards v. Essential Functions
 - Job Analysis v. Job Description
 - WPM Typing Requirement
 - Drivers License Requirement



Addressing emerging & developing employment discrimination issues

The Intersection of the ADAAA & PDA



- Accommodating pregnancy-related disabilities under the ADAAA & the PDA
 - Young v. UPS
 - “Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...as other persons not so affected but *similar in their ability or inability to work*, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. . . .”

Addressing emerging & developing employment discrimination issues

Protecting LGBT individuals from discrimination
because of sex

- SCOTUS: Sex Stereotyping (*Price v. Waterhouse*, 1989) & Same-Sex Harassment (*Oncale v. Sundowner Offshore Services*, 1998)
- EEOC: Transgender Status/Gender Identity (*Macy v. Department of Justice*, 2012) & Sexual Orientation (*David Baldwin v. Dept. of Transportation*, 2015)

Addressing emerging & developing employment discrimination issues

Clarifying employment relationships in light of
increasing complex employment relationships &
structures

- Temporary Workers
- Staffing Agencies
- Independent Contractors
- On-Demand Economy

Addressing emerging & developing employment discrimination issues

Backlash Discrimination

- Focusing on Discrimination against:
 - Muslims or Sikhs
 - Middle Eastern Individuals
 - South Asian Individuals
 - Persons perceived to be members of the above groups
 - Persons associated with members of the above groups



Equal Pay

Ensuring Equal Pay Protections for *All* Workers



What's the same?

Commitment to ending pay discrimination based on sex



What's new?

Explicit recognition of need to focus on pay discrimination based on race, national origin, disability, age, and other bases

UPDATE: EEO-I Pay Data Collection

- On August 29, 2017, the Office of Management & Budget stayed the pay data collection requirement voted on by the Commission in Sept. 2016.
- Under the regulations, the Commission must now submit a new information collection package for the EEO-I for OMB to review.

SECTION D - EMPLOYMENT DATA

Employment at this establishment - Report all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Category	Annual Salary in Thousands	Number of Employees (Report employees in only one category)													Total A-J
		Payroll Category													
		Number of Employees in Category													
		Payroll													
		Rate													
Rate	Payroll	Other	Other	Other	Other	Other	Other	Other	Other	Other	Other	Other	Other	Other	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Executive Senior Level Officers and Managers (1)	\$19,229 and under														
	\$19,230 - \$24,439														
	\$24,440 - \$29,649														
	\$29,650 - \$34,859														
	\$34,860 - \$40,069														
	\$40,070 - \$45,279														
	\$45,280 - \$50,489														
	\$50,490 - \$55,699														
	\$55,700 - \$60,909														
	\$60,910 - \$66,119														
	\$66,120 - \$71,329														
	\$71,330 - \$76,539														
	\$76,540 - \$81,749														
	\$81,750 - \$86,959														
	\$86,960 - \$92,169														
	\$92,170 - \$97,379														
\$97,380 - \$102,589															
\$102,590 - \$107,799															
\$107,800 - \$113,009															
\$113,010 - \$118,219															
\$118,220 - \$123,429															
\$123,430 - \$128,639															
\$128,640 - \$133,849															
\$133,850 - \$139,059															
\$139,060 - \$144,269															
\$144,270 - \$149,479															
\$149,480 - \$154,689															
\$154,690 - \$159,899															
\$159,900 - \$165,109															
\$165,110 - \$170,319															
\$170,320 - \$175,529															
\$175,530 - \$180,739															
\$180,740 - \$185,949															
\$185,950 - \$191,159															
\$191,160 - \$196,369															
\$196,370 - \$201,579															
\$201,580 - \$206,789															
\$206,790 - \$211,999															
\$212,000 and over															



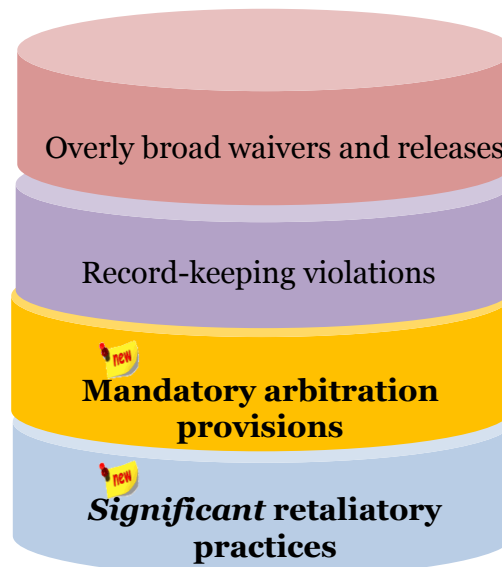
Preserving Access to the Legal System



Retaliation:

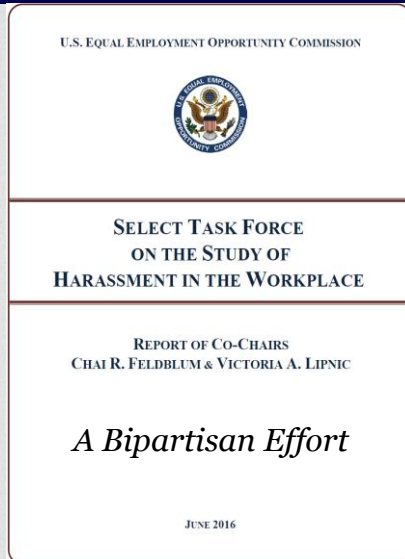
see November 2016
Guidance

<https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>



Preventing Harassment through Systemic Enforcement & Targeted Outreach

Rebooting Harassment Prevention



Harassment continues to be one of the most frequently raised complaint—

- over 32% of all private sector cases
- 43% of Federal sector cases

Report available at:

www.eeoc.gov/task_force/harassment/report.cfm

October 4th 2017 EEOC Announces NEW Respectful Workplace Training

- Training focuses on **preventing unwelcome conduct BEFORE** it rises to the level of illegal conduct.
- Training specifically for supervisors on how to supervise for respect.
- Bystander-intervention training for employees





Questions?

Contact Information & Resources

U.S. Equal Employment Opportunity Commission



Toll-free: 1-800-669-4000

TTY: 1-800-669-6820

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Training/Questions?

Richard Burgamy

Director, Louisville Area Office

(502) 582-6744

richard.burgamy@eeoc.gov

www.eeoc.gov